

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

**THE CHARTER OAK FIRE
INSURANCE COMPANY,
Plaintiff,**

vs.

**OLD REPUBLIC INSURANCE
COMPANY and BURGESS STEEL
ERECTORS OF NEW YORK, LLC,**

Defendants.

CIVIL ACTION NO.1:23-cv-05952-JHR

CIVIL ACTION

**ANSWER, AFFIRMATIVE DEFENSES,
AND JURY DEMAND**

**OLD REPUBLIC INSURANCE COMPANY and OLD REPUBLIC GENERAL
INSURANCE CORPORATION** incorrectly named as **OLD REPUBLIC INSURANCE COMPANY**
(collectively “Answering Defendant”) by and through its attorneys **RAWLE & HENDERSON, LLP**
by way of its Answer states:

Nature of the Action

1. Paragraph “1” calls for a legal conclusion to which no response is required. To the extent a response is required, Answering Defendant denies the allegations contained in Paragraph “1” of the Complaint.

The Parties

2. Answering Defendant denies knowledge or information sufficient to form a belief as to the allegations contained in Paragraph “2” of the Complaint.

3. Answering Defendant admits only that OLD REPUBLIC INSURANCE COMPANY was incorporated in the Commonwealth of Pennsylvania and denies the balance of the allegations contained in Paragraph “3” of the Complaint.

4. Answering Defendant admits the allegations contained in Paragraph “4” of the Complaint.

5. Answering Defendant denies knowledge or information sufficient to form a belief as to the allegations contained in Paragraph “5” of the Complaint.

6. Answering Defendant denies knowledge or information sufficient to form a belief as to the allegations contained in Paragraph “6” of the Complaint.

7. Answering Defendant denies knowledge or information sufficient to form a belief as to the allegations contained in Paragraph “7”, of the Complaint.

Jurisdiction and Venue

8. Paragraph “8” calls for a legal conclusion to which no response is required. To the extent a response is required, Answering Defendant denies knowledge or information sufficient to form a belief as to the allegations contained in Paragraph “8” of the Complaint.

9. Paragraph “9” calls for a legal conclusion to which no response is required. To the extent a response is required, Answering Defendant denies the allegations contained in Paragraph “9” of the Complaint.

10. Paragraph “10” calls for a legal conclusion to which no response is required. To the extent a response is required, Answering Defendant denies the allegations contained in Paragraph “10” of the Complaint.

Insurance Policies

11. Answering Defendant denies knowledge or information sufficient to form a belief as to the allegations contained in Paragraph “11” of the Complaint.

12. Paragraph “12” calls for a legal conclusion to which no response is required. To the extent a response is required, Answering Defendant denies knowledge or information sufficient to form a belief as to the allegations contained in Paragraph “12” of the Complaint.

13. Paragraph “13” calls for a legal conclusion to which no response is required. To the extent a response is required, Answering Defendant denies knowledge or information sufficient to form a belief as to the allegations contained in Paragraph “13” of the Complaint.

14. Answering Defendant denies the allegations contained in Paragraph “14” of the Complaint as Old Republic Insurance Company did not issue the subject policy and begs leave for the Court to refer to any applicable policy at the time of trial.

15. Answering Defendant denies the allegations contained in Paragraph “15” of the Complaint and begs leave for the Court to refer to any applicable policy at the time of trial.

16. Paragraph “16” calls for a legal conclusion to which no response is required. To the extent a response is required, Answering Defendant denies the allegations contained in Paragraph “16” of the Complaint, and begs leave for the Court to refer to any applicable policy at the time of trial.

17. Paragraph “17” calls for a legal conclusion to which no response is required. To the extent a response is required, Answering Defendant denies the allegations contained in Paragraph “17” of the Complaint, and begs leave for the Court to refer to any applicable policy at the time of trial.

18. Paragraph “18” calls for a legal conclusion to which no response is required. To the extent a response is required, Answering Defendant denies the allegations contained in Paragraph “18” of the Complaint, and begs leave for the Court to refer to any applicable policy at the time of trial.

Background Facts

19. Answering Defendant denies knowledge or information sufficient to form a belief as to the allegations contained in Paragraph “19” of the Complaint.

20. Answering Defendant denies knowledge or information sufficient to form a belief as to the allegations contained in Paragraph “20” of the Complaint.

21. Answering Defendant denies knowledge or information sufficient to form a belief as to the allegations contained in Paragraph “21” of the Complaint.

22. Answering Defendant denies knowledge or information sufficient to form a belief as to the allegations contained in Paragraph “22” of the Complaint.

23. Answering Defendant denies knowledge or information sufficient to form a belief as to the allegations contained in Paragraph “23” of the Complaint.

24. Paragraph “24” of the Complaint refers to another action and another set of pleadings the contents of which speak for themselves. To the extent a response is required, Answering Defendant denies the allegations contained in Paragraph “24” of the Complaint.

25. Paragraph “25” of the Complaint refers to another action and another set of pleadings the contents of which speak for themselves. To the extent a response is required, Answering Defendant denies the allegations contained in Paragraph “25” of the Complaint

26. Answering Defendant denies knowledge or information sufficient to form a belief as to the allegations contained in Paragraph “26” of the Complaint.

Tender to Old Republic

27. Paragraph “27” calls for a legal conclusion to which no response is required. To the extent a response is required, Answering Defendant denies the allegations contained in Paragraph “27” of the Complaint.

28. Paragraph “28” calls for a legal conclusion to which no response is required. To the extent a response is required, Answering Defendant denies the allegations contained in Paragraph “28” of the Complaint.

29. Paragraph “29” calls for a legal conclusion to which no response is required. To the extent a response is required, Answering Defendant denies the allegations contained in Paragraph “29” of the Complaint.

30. Paragraph “30” calls for a legal conclusion to which no response is required. To the extent a response is required, Answering Defendant denies the allegations contained in Paragraph “30” of the Complaint.

31. Paragraph “31” calls for a legal conclusion to which no response is required. To the extent a response is required, Answering Defendant denies the allegations contained in Paragraph “31” of the Complaint.

Claim for Declaratory Relief

32. Answering Defendant repeats and reasserts its responses to Paragraph “1” through paragraph “32” as if set forth at length herein.

33. Paragraph “33” of the Complaint calls for a legal conclusion to which no response is required. To the extent a response is required, Answering Defendant denies the allegations contained in Paragraph “33” of the Complaint, and begs leave for the Court to refer to any applicable policy.

34. Paragraph “34” of the Complaint calls for a legal conclusion to which no response is required. To the extent a response is required, Answering Defendant denies the allegations contained in Paragraph “34” of the Complaint, and begs leave for the Court to refer to any applicable policy.

35. Paragraph “35” of the Complaint calls for a legal conclusion to which no response is required. To the extent a response is required, Answering Defendant denies the allegations contained in Paragraph “35” of the Complaint.

36. Paragraph “36” of the Complaint calls for a legal conclusion to which no response is required. To the extent a response is required, Answering Defendant denies the allegations contained in Paragraph “36” of the Complaint.

37. Paragraph “37” of the Complaint calls for a legal conclusion to which no response is required. To the extent a response is required, Answering Defendant denies the allegations contained in Paragraph “37” of the Complaint.

38. Paragraph “38” of the Complaint calls for a legal conclusion to which no response is required. To the extent a response is required, Answering Defendant denies the allegations contained in Paragraph “38” of the Complaint.

Claim for Breach of Contract

39. Answering Defendant repeats and reasserts its responses to Paragraph “1” through paragraph “38” as if set forth at length herein.

40. Paragraph “40” of the Complaint calls for a legal conclusion to which no response is required. To the extent a response is required, Answering Defendant denies the allegations contained in Paragraph “40” of the Complaint.

41. Paragraph “41” of the Complaint calls for a legal conclusion to which no response is required. To the extent a response is required, Answering Defendant denies the allegations contained in Paragraph “41” of the Complaint.

42. Paragraph “42” of the Complaint calls for a legal conclusion to which no response is required. To the extent a response is required, Answering Defendant denies the allegations contained in Paragraph “42”, of the Complaint.

43. Answering Defendant denies the allegations contained in Paragraph “43” of the Complaint.

44. Answering Defendant denies the allegations contained in Paragraph “44” of the Complaint.

45. Answering Defendant denies the allegations contained in Paragraph “45” of the Complaint.

Claim for Restitution

46. Answering Defendant repeats and reasserts its responses to Paragraph “1” through paragraph “45” as if set forth at length herein.

47. Answering Defendant denies the allegations contained in Paragraph “47” of the Complaint.

48. Answering Defendant denies the allegations contained in Paragraph “48” of the Complaint.

49. Paragraph “49” calls for a legal conclusion to which no response is required. To the extent a response is required, Answering Defendant denies knowledge or information sufficient to form a belief as to the allegations contained in Paragraph “49” of the Complaint.

50. Answering Defendant denies the allegations contained in Paragraph “50” of the Complaint.

51. Answering Defendant denies the allegations contained in Paragraph “51” of the Complaint.

Claim for Equitable Contribution

52. Answering Defendant repeats and reasserts its responses to Paragraph “1” through paragraph “51” as if set forth at length herein.

53. Answering Defendant denies the allegations contained in Paragraph “53” of the Complaint.

54. Answering Defendant denies the allegations contained in Paragraph “54” of the Complaint.

55. Answering Defendant denies the allegations contained in Paragraph “55” of the Complaint.

56. Answering Defendant denies the allegations contained in Paragraph “56” of the Complaint.

WHEREFORE, Answering Defendant respectfully requests that this Court enter judgment in its favor, dismiss Plaintiff’s Complaint with prejudice, award Answering Defendant its costs (including

reasonable attorney fees and disbursements with interest), and grant Answering Defendant such other relief as requested, as the law, equity, and justice require.

AFFIRMATIVE DEFENSES

As and for further, separate affirmative defenses, Answering Defendant states as follows:

FIRST AFFIRMATIVE DEFENSE

The Complaint fails to state a claim upon which relief may be granted.

SECOND AFFIRMATIVE DEFENSE

The Complaint fails to join an indispensable and necessary party.

THIRD AFFIRMATIVE DEFENSE

With respect to the alleged rights, claims and obligations that Plaintiff seeks to enforce against Answering Defendant, Answering Defendant owed no duty to Plaintiff, and, therefore, Answering Defendant is not liable to Plaintiff for damages.

FOURTH AFFIRMATIVE DEFENSE

Plaintiff's Complaint is barred in whole or in part, by the doctrines of waiver, unclean hands, statute of limitations, estoppel and laches.

FIFTH AFFIRMATIVE DEFENSE

OLD REPUBLIC INSURANCE COMPANY did not issue the policy referred to in Plaintiff's Complaint.

SIXTH AFFIRMATIVE DEFENSE

Plaintiff's Complaint is barred in whole or in part, by the terms, provisions, and/or exclusions of the insurance policies at issue.

SEVENTH AFFIRMATIVE DEFENSE

Any recovery must be reduced to the extent Plaintiff failed to mitigate, minimize, or avoid any damage allegedly sustained arising out of the handling, defending, and/ or settling of the

underlying action.

EIGHTH AFFIRMATIVE DEFENSE

Plaintiff has not suffered any damages as a result of any actions taken by Answering Defendant.

NINTH AFFIRMATIVE DEFENSE

Plaintiff's recovery must be reduced in whole or in part to the extent any settlement sum paid or to be paid for the underlying action is unreasonable.

TENTH AFFIRMATIVE DEFENSE

Plaintiff's Complaint should be dismissed as the action is barred by the doctrines of mootness and ripeness.

ELEVENTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred by the doctrines of collateral estoppel and *res judicata*.

TWELFTH AFFIRMATIVE DEFENSE

There is no actual, real or justiciable controversy between Plaintiff and Answering Defendant.

THIRTEENTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred because service of the Summons and Complaint were not properly effected upon Answering Defendant.

FOURTEENTH AFFIRMATIVE DEFENSE

Under any and all relevant "other insurance" provisions contained in relevant policies and under any applicable law concerning the payment of defense or indemnification costs among multiple insurers, Answering Defendant's coverage, if any, is secondary to all other applicable insurance policies.

Answering Defendant expressly reserves the right to supplement or amend this reply to Plaintiff's Complaint and add additional defenses, including affirmative defenses, which may be discovered or become relevant in the future.

WHEREFORE, Answering Defendant respectfully requests that this Court enter judgment in its favor, dismiss Plaintiff's Complaint with prejudice, award Answering Defendant its costs (including reasonable attorney fees and disbursements with interest), and grant Answering Defendant such other relief as requested, as the law, equity, and justice require.

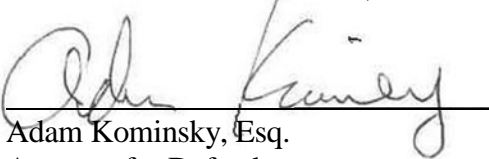
JURY DEMAND

Pursuant to Fed. R. Civ. P. 38 (b) Answering Defendant hereby demands a jury trial as to all issues.

Very truly yours,

RAWLE & HENDERSON, LLP

By:

A handwritten signature in dark ink, appearing to read 'Adam Kominsky', is written over a horizontal line.

Adam Kominsky, Esq.

Attorney for Defendant

OLD REPUBLIC INSURANCE CO.

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Our File No.:009209-806402

DATED September 1, 2023